

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE.**

WRIT PETITION NO. 521 OF 2005.

M/s Ram Steel Eolling & Forging Mills. ..Petitioner.

vs.

Union of India & ors. ..Respondents.

Shri S.S. Joshi with Shirish Lad i/b V.S. Legal Associates for the petitioner.

Shri Y.S. Bhate for the respondents.

**CORAM: V.C.DAGA &
J.P.DEVADHAR, JJ.
DATED: 17-3-2005.**

P.C.

1. This petition is directed against the orders dated 10.9.2003 and 16.9.2003 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Region Bench at Mumbai (herein "Tribunal" for short).

2. The facts reveal that appeal before Tribunal filed by the petitioner/appellant therein was barred by limitation. Application for condonation of delay in filing that appeal was preferred. This application came to be dismissed, without affording any opportunity of hearing to the petitioner, holding it to be barred by limitation by 11 months. With the dismissal of the said application for condonation of delay, appeal also came to be dismissed vide order dated 16.9.2003, being barred by limitation.

3. Petitioner appears to have moved an application for setting aside exparte order, entertaining a belief that the said order being in breach of principles of natural justice would be set aside. However, the said application also came to be rejected. The petitioner has now filed this petition under Articles 226 and 227 of the Constitution of India, challenging both the orders referred to hereinabove.

4. Heard learned Counsel appearing for the petitioner as well as learned Counsel for the respondents.

5. It is needless to mention that without hearing the petitioner, their application for condonation of delay could not have been rejected by the Tribunal. At least, application moved by the petitioner for setting aside exparte order i.e. order dismissing application for condonation of delay ought to have been allowed by the Tribunal so as to correct its earlier error.

. In the above view of the matter, both the orders are unsustainable and are liable to be quashed and set aside.

6. As a natural consequence, application for condonation of delay along with appeal will get revived and the same in normal course should go back to the Tribunal for hearing afresh. However, instead of sending the matter back to the Tribunal with a direction to hear the petitioner afresh; on merits of the application for condonation of delay, we thought it fit to hear and decide the application for condonation of delay here only so as to avoid further delay in the appeal. In this view of the matter, parties were heard on application for condonation of delay. Having seen the reasons disclosed in the application, in our opinion, application deserves to be allowed, however, subject to furnishing a Bank guarantee of any nationalised bank in the sum of Rs.3 lacs so as to secure outstanding dues; due and recoverable from the petitioner.

7. In the above view of the matter, delay in filing appeal is condoned. Appeal is restored to file. The matter is remitted back to the Tribunal with a direction to decide it on its own merits. Petitioner to furnish bank guarantee with the Tribunal within 4 weeks with a specific clause; that in the event of non-renewal of bank guarantee, the bank shall remit the proceeds of the bank guarantee without any reference or demand from the tribunal and/or Court and/or respondents. Failure on the part of the

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petitioner to furnish bank guarantee within 4 weeks,
this petition shall be deemed to have been dismissed
without any further reference to this Court.

8. Rule is made absolute in terms of this order
with no order as to costs. Certified copy expedited.

(J.P.DEVADHAR, J.)

(V.C.DAGA, J.)
